

Legislation to Establish a Department of Homeland Security and the National Office for Combating Terrorism as Supported by Bipartisan Vote of the Senate Governmental Affairs Committee

Sec. 1. Short Title. This Act may be cited as the “National Homeland Security and Combating Terrorism Act of 2002.”

Sec. 2. Outlines the organization of the Act into 3 divisions: (A) National Homeland Security and Combating Terrorism, (B) Immigration Reform, Accountability, and Security Enhancement Act of 2002, and (C) Federal Workforce Improvement.

Division A - National Homeland Security and Combating Terrorism

Sec. 100. Definitions. Defines terms used in Division A.

Title I. Department of Homeland Security

Subtitle A - Establishment of the Department of Homeland Security

Sec. 101. Establishment of the Department of Homeland Security. Establishes the Department of Homeland Security whose mission is (1) to promote homeland security, particularly with regard to terrorism; and (2) carry out the other functions, and promote the other missions, of entities transferred to the Department as provided by law. The homeland security mission includes preventing terrorist attacks or other homeland threats within the United States; reducing the vulnerability of the United States; and minimizing the damage, and assisting in the recovery, from terrorist attacks or other natural or man-made crises within the United States.

Sec. 102. Secretary of Homeland Security. States that the Secretary of Homeland Security shall be appointed by the President and confirmed by the Senate. This section outlines the Secretary’s broad responsibilities for developing policies, goals, objectives, priorities and plans for the promotion of homeland security, which include: developing a national strategy with the Director of the National Office for Combating Terrorism (established in Titles II and III), and advising the Director on the development of a comprehensive budget for programs under the strategy. The Secretary is also responsible for including State and local governments and other entities into the full range of homeland security activities; consulting with the Secretary of Defense and State governors regarding integration of the United States military, including the National Guard, into all aspects of the strategy and its implementation, including detection, prevention, protection, response and recovery, as well as training of personnel to respond to terrorist attacks involving chemical or biological agents; and developing an enterprise architecture for Department-wide information technology. In addition, the Secretary is responsible for administering the Homeland Security Advisory System and for annually reviewing and updating the Federal Response Plan for homeland security and emergency preparedness.

Sec. 102 - subsection (c). Visa Issuance. Vests in the Secretary authority to issue regulations with respect to visas and other immigration and nationality laws implemented by consular officers. The Secretary is also authorized to assign employees of the Department to diplomatic and consular posts to advise consular officers regarding specific security threats relating to the adjudication of visa applications, review applications, and investigate matters under the jurisdiction of the Secretary. The Secretary of State may direct a consular officer to refuse a visa in the foreign policy or security interests of the United States.

Sec. 102 - subsection (d). Amends the National Security Act to include the Secretary as a member of the National Security Council.

Sec 103. Deputy Secretary. Establishes a Deputy Secretary for Homeland Security, appointed subject to Senate confirmation, responsible for assisting the Secretary in the administration and operations of the Department.

Sec. 104. Under Secretary for Management. Establishes an Under Secretary for Management, appointed subject to Senate confirmation, who will be responsible for the management and administration of the Department, including the budget and appropriations, procurement, human resources and personnel, information technology, facilities and property, and other functions.

Sec. 105. Assistant Secretaries. Establishes not more than 5 Assistant Secretaries, appointed subject to Senate confirmation. When submitting the name of an individual to the Senate for confirmation, the President shall describe the general responsibilities that the appointee will exercise and, subject to that, the Secretary shall assign each Assistant Secretary such functions as the Secretary considers appropriate.

Sec. 106. Inspector General. Provides that there shall be an Inspector General (IG) in the Department subject to the Inspector General Act of 1978 (5 U.S.C. App), who, under the Inspector General Act, will be appointed subject to Senate confirmation. The Secretary may prohibit the IG from carrying out audits or performing other duties if the Secretary determines it necessary to prevent the disclosure of certain sensitive information, preserve national security, or prevent significant impairment to the national interest. The IG must notify Congress when the Secretary exercises these powers. The IG also shall have oversight over internal investigations performed by any other investigatory offices where they exist in the Department's subagencies. The Inspector General shall also designate one official to review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department; publicize information on the responsibilities and functions of the official; and submit semi-annual reports to Congress describing the implementation of this section. (The civil rights language parallels a USA Patriot Act provision requiring the designation of a similar official in the Justice Department's IG office.)

Sec. 107. Chief Financial Officer. Establishes a Chief Financial Officer (CFO), appointed subject to Senate confirmation.

Sec. 108. Chief Information Officer. Establishes a Chief Information Officer (CIO) to assist the Secretary with Department-wide information resources management.

Sec. 109. General Counsel. Establishes a General Counsel, appointed subject to Senate confirmation, to serve as the chief legal officer of the Department.

Sec. 110. Civil Rights Officer. Establishes a Civil Rights Officer, appointed by the President and confirmed by the Senate, who shall be responsible for, among other duties, ensuring compliance with all civil rights laws and regulations applicable to Department employees and participants in Department programs and overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the Department's programs and activities.

Sec. 111. Privacy Officer. Establishes a Privacy Officer, appointed by the Secretary, who will oversee compliance with the Privacy Act and other applicable laws relating to the privacy of personal information. The Privacy Officer will assist the Department with the development and implementation of policies and procedures to ensure that privacy considerations and safeguards are incorporated and implemented in programs and activities; and that information is handled in a manner that minimizes the risks of harm to individuals from inappropriate disclosure.

Sec. 112. Chief Human Capital Officer. States that the Secretary shall appoint or designate a Chief Human Capital Officer to advise and assist the Department on workforce skills, training, recruitment, retention, and other issues necessary to attract and retain a highly qualified workforce.

Sec. 113. Office of International Affairs. Creates Office of International Affairs within the Office of the Secretary, headed by a Director, who shall be responsible for: promoting information and education exchange with foreign nations, including joint research and development on countermeasures, joint training exercises of first responders, and exchange of expertise on terrorism prevention, response and crisis management; planning international conferences, exchange programs and training activities; and managing international activities within the Department in consultation with the Department of State and other relevant Federal officials. The Director shall initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and have been cooperative with the United States in the area of counterterrorism.

Sec. 114. Executive Schedule Positions. Establishes the Executive Schedule levels for the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other senior officers.

Subtitle B - Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection. Establishes a Directorate of Border and

Transportation Protection which shall be headed by an Under Secretary who is appointed by the President with the advice and consent of the Senate. The Directorate shall be responsible for securing borders, territorial waters, ports, waterways, air, land, and sea transportation systems, including coordinating governmental activities at ports of entry. It shall also be responsible for using intelligence to establish inspection priorities for agricultural products and livestock from locations suspected of terrorist activities, harboring terrorists, or of having unusual human health or agriculture disease outbreaks. In addition, it shall provide agency-specific training for agents and analysts from within the Department, other agencies, State and local agencies and international entities that have partnerships with the Federal Law Enforcement Training Center. Authorities, functions, personnel, and assets are transferred from the Customs Service, which shall be maintained as a distinct entity; the Coast Guard, which shall also be maintained as a distinct entity and shall report directly to the Secretary; that portion of the Animal Plant and Health Inspection Service of the Department of Agriculture which administers laws relating to agricultural quarantine inspections at points of entry; the Transportation Security Administration of the Department of Transportation; and the Federal Law Enforcement Training Center of the Department of Treasury (a center which provides training to law enforcement officers of 70 Federal partner agencies).

Sec. 131 subsection (d) - Exercise of Customs Revenue Functions. Notwithstanding the transfer of authorities, functions, personnel, and assets from the Customs Service, the Secretary of the Treasury shall retain authority to issue regulations governing customs revenue functions, with the concurrence of the Secretary and with the assistance of the Customs Service. The Customs Service is responsible for administering and enforcing the laws regarding customs revenue functions, which include: assessing, collecting and refunding duties, taxes and fees on imported goods; administering import quotas and labeling requirements; collecting import data needed to compile international trade statistics; and administering reciprocal trade agreements and trade preference legislation. These regulations will be administered by the Secretary. Within 60 days, the Secretary of the Treasury will submit recommendations to Congress regarding the appropriate allocation of legal authorities relating to these functions.

Sec. 131 subsection (e) - Preserving Coast Guard Mission Performance. Preserves the structural and operational integrity of the Coast Guard, the authority of the Commandant, the non-homeland security missions of the Coast Guard and the Coast Guard's capabilities to carry out these missions even as it is transferred to the new Department. The Coast Guard must be maintained intact and without reduction after transfer to the Department unless Congress legislates otherwise. No missions, functions, personnel or assets may be controlled by, or diverted to the principal and continuing use of any other part of the Department. The Secretary may not make a substantial change to the Coast Guard's non-security missions or capabilities without prior Congressional approval by statute. However, the President may waive this restriction for up to 90 days if he certifies to Congress that there is a clear, compelling and immediate state of national emergency. None of these conditions shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

The Coast Guard will report directly to the Secretary. The Inspector General of the Department will conduct an annual review to assess the Coast Guard's performance, particularly with respect to non-security missions.

Sec. 132. Directorate of Intelligence. Establishes a Directorate of Intelligence, headed by an Under Secretary appointed by the President by and with the advice and consent of the Senate. The Directorate shall serve as a national-level focal point for the analysis of information available to the United States Government relating to the plans, intentions, and capabilities of terrorists and terrorist organizations for the purpose of supporting the mission of the Department. The Directorate shall communicate, coordinate, and cooperate with the intelligence community and other agencies as determined by the Secretary. The Director of Central Intelligence's Counterterrorist Center shall have primary responsibility for the analysis of foreign intelligence relating to international terrorism. The Directorate of Intelligence may conduct supplemental analysis of foreign intelligence relating to threats of terrorism against the United States.

In general, the Directorate shall be responsible for receiving and analyzing law enforcement information, intelligence and other information to detect and identify specific threats of terrorism; working with the Director of Central Intelligence and the intelligence community to establish overall intelligence priorities; requesting additional information; disseminating information to other entities, including state and local law enforcement, to assist in deterring, preventing and responding to terrorism and other threats; establishing, in conjunction with other appropriate officials, secure communications and information technology infrastructure, and advanced analytical tools; and ensuring that all material received by the Department is protected against unauthorized disclosure and handled consistent with the authority of the Director of Central Intelligence to protect sources and methods, and similar authorities of the Attorney General concerning sensitive law enforcement information. The Directorate is

also responsible for providing training and other support to providers of information to the Department or consumers of information from the Department; and making recommendations to the Secretary for improving policies and procedures governing sharing of law enforcement, intelligence, and other information within the Federal government and between the Federal government and state and local governments and law enforcement agencies. The Directorate shall be staffed, in part, by analysts via reimbursable detail from agencies of the intelligence community.

Sec. 132 subsection (c) - Access to Information. Provides that, unless otherwise directed by the President, the Secretary shall have access to, and agencies shall provide, all reports, assessments, analytical information, and information, including unevaluated intelligence, relating to the plans, intentions, capabilities, and activities of terrorist organizations and to other areas of responsibility that may be collected, possessed, or prepared by any other United States government agency. As the President may further provide, the Secretary shall receive additional information requested by the Secretary. The Secretary may enter into cooperative agreements with agencies, and regardless of whether the Secretary has entered into any such cooperative agreement, all agencies shall promptly provide information to the Secretary.

Sec. 132 subsection (e) - Additional Responsibilities. The Under Secretary for Intelligence is also responsible for developing analyses concerning the means terrorists might employ to exploit vulnerabilities in homeland security infrastructure; developing and conducting experiments, tests and inspections to test weaknesses in homeland defenses; developing and practicing counter-surveillance techniques to prevent attacks; conducting risk assessments to determine the risk posed by specific kinds of terrorist attacks; and working with the Directorate of Critical Infrastructure Protection, other agencies, State and local governments, the private sector and local law enforcement and intelligence agencies to address vulnerabilities.

Sec. 133. Directorate of Critical Infrastructure Protection. Establishes a Directorate of Critical Infrastructure Protection which shall be headed by an Under Secretary who is appointed by the President with the advice and consent of the Senate. Among other duties, the Directorate shall be responsible for: receiving relevant intelligence from the Directorate of Intelligence, law enforcement information and other information to comprehensively assess the vulnerabilities of key resources and critical infrastructures; identifying priorities and supporting protective measures by the Department and other entities; developing a comprehensive national plan for securing key resources and critical infrastructure (as part of the National Strategy described in Title III); establishing specialized research and analysis units to identify vulnerabilities and protective measures in key areas of critical infrastructure, as well as other systems or facilities whose destruction or disruption could cause substantial harm to health, safety, property, or the environment; enhancing and sharing of information regarding cyber-security and physical security, developing security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the roles of various governmental agencies in preventing, defending, and recovering from attacks; and working with the Department of State and other appropriate agencies to help establish cyber security policy, standards and enforcement mechanisms. The Directorate will also be responsible for establishing the necessary organizational structure to provide leadership and focus on both cyber-security and physical security, and ensuring the maintenance of a nucleus of cyber and physical security experts in the United States Government.

The authorities, functions, personnel and assets of the following offices are transferred to the Department: (1) the Critical Infrastructure Assurance Office of the Department of Commerce, (established by Presidential Decision Directive 63 in 1998 to coordinate federal initiatives on critical infrastructure); (2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section); (3) the National Communications System of the Department of Defense (established by Executive Order in 1984 to assist the President and others in (a) the exercise of telecommunications functions and (b) coordinating the planning for and provision of national security and emergency preparedness communications); (4) the Computer Security Division of the National Institute of Standards and Technology (NIST) of the Department of Commerce (the NIST division that is tasked with improving information systems security); (5) The National Infrastructure Simulation and Analysis Center of the Department of Energy (established to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation); (6) The Federal Computer Incident Response Center of the General Service Administration (a partnership of computer incident response, security, and law enforcement personnel to share information on and handle computer security incidents); (7) The Energy Security and Assurance Program of the Department of Energy (a national security program to help reduce America's energy supply vulnerability from severe disruptions due to natural or malevolent causes); and (8) The Federal Protective Service of the General Services Administration (GSA) (which oversees security at Federal property managed by GSA).

Sec. 134. Directorate of Emergency Preparedness and Response. Establishes a Directorate of Emergency Preparedness and Response which shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. Among other duties, the Directorate shall be responsible for carrying out Federal emergency preparedness and response activities; providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction; overseeing Federal, State and local emergency preparedness training and exercise programs; developing and managing a single response system for national incidents; managing and updating a Federal disaster response plan; using the resources of both human and animal health communities in emergency planning and response activities; creating a National Crisis Action Center to coordinate Federal support for State and local governments and the private sector in a crisis; coordinating and integrating operational activities of the Department of Defense, the National Guard, and other Federal agencies into the Federal response plan; managing, in consultation with the Under Secretary of Science and Technology and the Centers for Disease Control, the Select Agent Registration Program; overseeing the Centers for Disease Control's management of the Strategic National Stockpile of drugs, biologics, and devices, which is transferred to the Department; and developing a comprehensive plan to address the interface of medical informatics and the medical response to terrorism.

The authorities, functions, personnel and assets of the following entities are transferred: the Federal Emergency Management Agency; the National Office of Domestic Preparedness of the Federal Bureau of Investigation of the Department of Justice (created by the Attorney General in 1998 to coordinate and facilitate federal efforts to assist state and local emergency responders with training and materials necessary to respond to an event involving weapons of mass destruction); the Office of Domestic Preparedness of the Department of Justice (developed to assist in the training of state and local law enforcement agencies to respond to terrorist incidents); the Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services (HHS) (responsible for coordinating HHS efforts to plan and prepare for a national response to medical emergencies arising from the use of weapons of mass destruction); the Strategic National Stockpile of the Department of Health and Human Services; and the functions of the Select Agent Registration Program (HHS) and the United States Department of Agriculture (USDA) (a program designed to identify all biological agents and toxins that have the potential to pose severe threats to public health and safety, regulate the transfer of such agents and toxins, and establish a registration scheme regulating their possession, use and transfer).

Sec. 135. Directorate of Science and Technology. Establishes a Directorate of Science and Technology which shall be headed by an Under Secretary appointed by the President with the advice and consent of the Senate. The Directorate will support the mission of the Department by (1) managing and supporting research and development activities to meet national homeland security needs and objectives; (2) articulating national research and development goals, priorities, and strategies pursuant to the mission of the Department; (3) coordinating with entities within and outside the Department to advance the research and development agenda of the Department; (4) advising the Secretary of the Department on all scientific and technical matters; and, (5) facilitating the transfer and deployment of technologies crucial to homeland security needs. To fulfill the mission of the Directorate, the Under Secretary will be responsible for, among other things, developing a technology roadmap biannually for achieving technological goals relevant to homeland security; instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities; establishing mechanisms for sharing research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities; and, establishing in coordination with the appropriate Under Secretaries, a National Emergency Technology Guard (NET Guard) comprised of volunteers with expertise in science and technology to assist local communities in responding to and recovering from emergency contingencies.

This section authorizes the Secretary to exercise certain transactional and hiring authorities relating to research and development and the Secretary shall have the authority to transfer funds to agencies. Additionally, DHS will help direct the use of bioterrorism-related funds, appropriated to NIH, through joint strategic agreements between the Secretary of HHS and the Secretary of DHS. Under such agreements, the Secretary of DHS will have the authority to determine the broad, general research priorities, while the Secretary of HHS will have the authority to set the specific, scientific research agenda. NIH will continue to manage and award all funds. The Secretary is also able to contract with existing Federally Funded Research and Development Centers (FFRDCs), or establish such centers. This section also establishes an Acceleration Fund, to be administered by the Security Advanced Research Projects Agency (SARPA), to stimulate research and development projects; the Fund is authorized to receive an appropriation of \$200,000,000 for fiscal year 2003 and such sums as are necessary in subsequent fiscal years.

Through a joint agreement with the Coast Guard, ten percent of the Acceleration Fund is to be allocated to Coast Guard homeland security missions for FY'04 and FY'05.

The Directorate also establishes several mechanisms to promote research and development activities. These include: (1) a Science and Technology Council composed of senior research and development officials to, among other things, provide the Under Secretary with recommendations on priorities and strategies, and facilitate coordination among agencies, the private sector, and academia; (2) the Security Advanced Research Projects Agency (SARPA) to undertake and stimulate basic and applied research, leverage existing research and development, and accelerate the transition and deployment of technologies; (3) an Office of Risk Analysis and Assessment to, among other duties, conduct and commission studies of threat assessment and risk analysis to help guide the research priorities of the Department; (4) an Office of Technology Evaluation and Transition to serve as the principal clearinghouse for receiving and evaluating proposals for innovative technologies; (5) an Office for National Laboratories, which shall enter, on behalf of the Department, into joint sponsorship agreements with the Department of Energy (DOE) to coordinate and utilize the resources and expertise of DOE national laboratories and sites; and, (6) an Office of Laboratory Research, which shall incorporate personnel, functions, and assets from several programs and activities transferred from DOE that are related to chemical and biological security, nuclear smuggling, and nuclear assessment, as well as the National Bio-Weapons Defense Analysis Center which is transferred from the Department of Defense. The Office shall also administer the disbursement and undertake oversight of research and development funds transferred to HHS and other agencies outside the Department, and shall have a Science Advisor for bioterrorism. This section also requires the Secretary to develop a comprehensive long-term strategy and plan for engaging for-profit and other non-Federal entities in research, development, and production of homeland security countermeasures for biological, chemical, and radiological weapons.

Sec. 136. Directorate of Immigration Affairs. Establishes a Directorate of Immigration Affairs to carry out all functions of that Directorate in accordance with Division B of the Act.

Sec. 137. Office for State and Local Government Coordination. Establishes within the Office of the Secretary an office to oversee and coordinate programs for and relationships with State and local governments; assess, and advocate for, the resources needed by State and local governments to implement the National Strategy for combating terrorism; provide State and local governments with regular information, research and technical support; and develop a process for receiving meaningful input from State and local governments to assist in the development of the National Strategy and other homeland security activities. The Secretary shall appoint a Chief Homeland Security Liaison Officer, who shall coordinate the activities of homeland security liaison officers in each state. The officers shall coordinate between the Department and State and local first responders, provide training for State and local entities, identify homeland security functions in which the Federal role duplicates the State or local role and recommend ways to reduce inefficiencies, and assist State and local entities in priority setting based on discovered needs of first responder organizations. Establishes the Interagency Committee on First Responders, composed of the Chief Homeland Security Liaison Officer and representatives from Federal agencies including HHS, CDC, FEMA, Coast Guard, DoD, FBI and others, who will ensure coordination among the Federal agencies involved with State and local first responders, identify community-based first responder needs, recommend new or expanded grant programs to improve local first responder services, and find ways to streamline support by Federal agencies for local first responders. Also establishes the Advisory Council for the Interagency Committee, which shall be composed of no more than 13 members representing community-based first responders from both urban and rural communities.

Sec. 138. United States Secret Service. Transfers the authorities, functions, personnel and assets of the United States Secret Service, which shall be maintained as a distinct entity reporting directly to the Secretary.

Sec. 139. Border Coordination Working Group. Requires the Secretary to establish a border security working group with the Under Secretaries for Border and Transportation Security and for Immigration Affairs. The Working Group would, with respect to all border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication and in other areas; coordinate joint and cross-training programs for personnel; monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel; develop and implement policies and technologies to ensure the speedy, orderly and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high risk traffic, travel and commerce; and identify systemic problems in coordination with border security agencies and propose changes to mitigate such problems. The Secretary shall consult with and may include representatives of such agencies in Working Group deliberations as appropriate.

Sec. 140. Executive Schedule Positions. Adds the appropriate Under Secretaries within the Department to the Executive Schedule.

Subtitle C - National Emergency Preparedness Enhancement - The National Emergency Preparedness Enhancement Act of 2002.

Sec. 151. Short Title.

Sec. 152. Preparedness Information and Education. Establishes a Clearinghouse on Emergency Preparedness, headed by a director, who will consult with Federal agencies, task forces and others to collect information on emergency preparedness, including information relevant to the Strategy. The Clearinghouse will ensure efficient dissemination of emergency preparedness information; establish a one-stop shop for emergency preparedness information, including a web site; develop an ongoing public awareness campaign, including a theme to be implemented annually during National Emergency Preparedness Week; and compile and disseminate information on best practices for emergency preparedness.

Sec. 153. Pilot Program. Authorizes the Department to award grants to private entities to pay the Federal share of the cost of improving emergency preparedness and of educating employees and others using the entities' facilities about emergency preparedness. The Federal share of the cost shall be 50 percent, up to a maximum of \$250,000 per grant recipient. There are authorized to be appropriated \$5,000,000 for each of fiscal years FY 2003 through 2005 for such grants.

Sec. 154. Designation of National Emergency Preparedness Week. Designates each week that includes September 11 as "National Emergency Preparedness Week" and requests that the President issue a proclamation each year to observe the week with appropriate programs and activities. In conjunction with the week, the head of each Federal agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, and tools, giving a high priority to efforts designed to address terrorist attacks.

Subtitle D - Miscellaneous Provisions.

Sec. 161. National Biological and Chemical Weapons Defense Analysis Center. Establishes within the Department of Defense a National Biological and Chemical Weapons Defense Analysis Center to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction, and designates it for transfer to the Department.

Sec. 162. Review of Food Safety. Requires the Secretary to enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed and comprehensive review of Federal statutes and regulations affecting the safety and security of the food supply and to review the efficiency and effectiveness of the organizational structure of Federal food safety oversight. Requires the Academy to report its findings and conclusions, and recommendations, to Congress not later than 1 year after enactment of this Act and prescribes the issues which shall be addressed in the report. The Secretary is further required to provide Congress and the President a response to the recommendations.

Sec. 163. Exchange of Employees between agencies and State and Local governments. Authorizes the Secretary to establish an employee exchange program under existing provisions of Title 5, United States Code to improve the coordination of antiterrorism programs and activities between the Department and State and local governments. An employee of the Department may be detailed to a State or local government, and State and local government employees may be detailed to the Department under this program. The section requires that employees assigned under this program have appropriate training and experience and that the program be implemented in a manner that appropriately safeguards classified and other sensitive information.

Sec. 164. Whistleblower Protection for Federal Employees Who are Airport Security Screeners. Extends to federal employees who are baggage screeners for the Transportation Security Agency the same whistleblower protections as apply generally to federal employees. They are protected against retaliation for coming forward with information about a violation, mismanagement, waste, abuse, or a danger to health or safety.

Sec. 165. Whistleblower Protection for Certain Airport Employees. Extends to airport screening personnel who are not federal employees the same whistleblower protections as apply to air carrier personnel. They are protected against retaliation for coming forward with information about a violation relating to air carrier safety.

Sec. 166. Bioterrorism Preparedness and Response Division. This section establishes a Bioterrorism Preparedness and Response Division within the Centers for Disease Control and Prevention. This new division will lead and coordinate the counter-bioterrorism efforts of the CDC, as well as serve as the focal point for coordination and communication between the CDC and both the public health community and the Department of Homeland Security. Additionally, this division will train public health personnel in responses to bioterrorism.

Sec. 167. Coordination with the Department of Health and Human Services under the Public Health Service Act. This section ensures that the Federal Response Plan is consistent with Section 319 of the Public Health Service Act, which grants the Secretary of Health and Human Services authority to act in the event of a public health emergency.

Sec. 168. Rail Security Enhancements. Authorizes grants over a 2-year period for the benefit of Amtrak, including \$375 million for the cost of enhancements to security and safety of Amtrak rail passenger service; \$778 million for life safety improvements to Amtrak tunnels between New York and Washington built between 1872 and 1910; and \$55 million for emergency repair and return to service of Amtrak passenger cars and locomotives. This money will remain available until expended.

Sec. 169. Grants for Firefighting Personnel. This section amends the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229), as amended, to provide grants to hire employees engaged in fire protection. Grants shall be awarded for a 3-year period. The total amount shall not exceed \$100,000 per firefighter, indexed for inflation, over the 3-year grant period. The Federal grant shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired. The Director may waive the 25 percent non-Federal match for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship. Grants may only be used for additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources. \$1,000,000,000 is authorized for each of fiscal years 2003 and 2004 for grants under this subsection.

Sec. 170. Review of Transportation Security Enhancements. Requires the Comptroller General to prepare and submit a report to Congress within one year that reviews all available intelligence on terrorist threats against aviation, seaport, rail and transit facilities; reviews all available information on the vulnerabilities of such facilities; and reviews the steps taken by agencies since September 11 to improve security at such facilities to determine the effectiveness of those measures at protecting passengers and transportation infrastructure from terrorist attack. The report shall also include proposed steps to reduce deficiencies found in aviation, seaport, rail and transit security, and the costs of implementing those steps. Within 90 days after the report is submitted to the Secretary, the Secretary shall provide to Congress and the President the Department's response to the report and its recommendations to further protect passengers and infrastructure from terrorist attack.

Sec. 171. Interoperability of Information Systems. Requires the Director of the Office of Management and Budget, in consultation with the Secretary, to develop an enterprise architecture to achieve interoperability among information systems of federal agencies with responsibility for homeland security, and to establish timetables for implementation. The Director will ensure the implementation of the architecture by federal agencies, and report to Congress on progress achieved. The architecture must be designed so that information systems can be deployed rapidly and upgraded with new technologies, and must be highly secure. The section also requires the Director, in consultation with the Secretary, to develop a plan to achieve interoperability among the information systems of federal, state, and local agencies with responsibility for homeland security, and to report to Congress on progress achieved.

Subtitle E - Transition Provisions.

Sec. 181. Definitions. Defines the term "agency," for purposes of subtitle E, to include any entity, organizational unit, or function transferred or to be transferred under this title. Defines the term "transition period" to mean the 12-month period beginning with the effective date of Division A.

Sec. 182. Transfer of Agencies. Provides that the transfer of an agency to the Department shall occur when the President directs, but in no event later than the end of the transition period.

Sec. 183. Transitional Authorities. Provides that until an agency is transferred, existing officials shall provide the Secretary such assistance as he may request in preparing for the integration of the agency into the Department and may detail personnel to assist with the transition on a reimbursable basis. During the transition period the President may designate any officer who has been confirmed by the Senate, and who continues as such an officer, to act until the office is filled, subject to the time limits in the Vacancies Act. A Senate-confirmed officer of an agency transferred to the Department may be appointed to a Departmental office with equivalent authorities and responsibilities without being again confirmed by the Senate for the new position.

Sec. 184. Incidental Transfers and Transfer of Related Functions. The Director of OMB, in consultation with the Secretary, may make additional incidental transfers of personnel and assets. Also, at any time an agency is transferred to the Department, the President may transfer any agency established to carry out or support adjudicatory or review functions in relation to the transferred agency. However, the President would not be authorized to transfer the Executive Office of Immigration Review in the Justice Department under this section. The transfer of an agency that is part of a department will include the transfer of related secretarial functions to the new Secretary of Homeland Security.

Sec. 185. Implementation Progress Reports and Legislative Recommendations. Provides that the Secretary shall prepare and submit to Congress a series of Implementation Progress Reports. The initial report is due not later than 6 months after the date of enactment. Additional reports are due every six months until the final report which will be due not later than 6 months after the transfer is completed.

Sec. 185 subsection (c) - Contents. This subsection specifies the information to be provided. Reports will describe the steps needed to transfer and incorporate agencies into the Department, a timetable, and a progress report on meeting the schedule. Reports will also include information workforce planning, information technology matters, and other matters necessary for the successful implementation of the transition.

Sec. 185 subsection (d) - Legislative Recommendations. Calls upon the Secretary to submit recommendations for legislation that the Secretary determines necessary as part of each semi-annual implementation progress report. If the legislative recommendations are ready sooner, the bill specifically invites the Secretary to submit them in advance of the balance of the report. The Secretary is to provide recommended legislation that would, among other things, facilitate the integration of transferred entities into the Department; reorganize within the Department, or provide the Secretary additional authority to do so; address inequities in pay or other terms and conditions of employment; enable the Secretary to engage in essential procurement; and otherwise help further the mission of the Department.

Sec. 186. Transfer and Allocation. Provides that, except where otherwise provided in this title, personnel employed in connection with, and the assets, liabilities, contracts, property records, and any unexpended balance on appropriations, authorizations, allocations and other funds related to the functions and entities transferred, shall be transferred to the Secretary as appropriate, subject to the approval of the Director of the Office of Management and Budget and subject to applicable laws on the transfer of appropriated funds. Unexpended funds transferred pursuant to this section shall be used only for purposes for which the funds were originally authorized and appropriated.

Sec. 187. Savings Provisions. In general, this section provides that all orders, determinations, rules, regulations, permits, agreements, contracts, recognitions of labor organizations, collective bargaining agreements and other administrative actions in effect at the time this Division takes effect shall continue in effect according to their terms until modified or revoked. Certain proceedings, such as notices of proposed rulemaking or applications for licenses, permits, or financial assistance pending at the time this title takes effect shall also continue. Suits and other proceedings commenced before the effective date of this Act are also not affected. Administrative actions by an agency relating to a function transferred under this title may be continued by the Department.

Sec. 187 subsection (f)(1). Employee Rights. This subsection is intended to assure employees in agencies transferred to the new Department that they can keep their collective bargaining rights unless their job changes and there is an actual national security basis for taking those rights away. For agencies transferred to the Department subject to pre-existing rights to form a union, the President may not terminate those rights agency-wide by executive order. However, such rights may be withdrawn from individual employees at the Department if their primary job duties materially change and consist of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation and if it is demonstrated that collective bargaining would adversely affect national security.

Applying this standard under existing procedures, managers at the Department may act immediately to remove individual employees from collective bargaining upon deciding that the conditions for removal are met. Either the union or management may ask the Federal Labor Relations Authority (FLRA) to review this action. For new offices established at the Department under this bill, the President may remove collective bargaining rights from an entire office by executive order, if the primary function is intelligence, counterintelligence, or investigative duties related to terrorism investigation, and if application of those rights would adversely affect national security. Furthermore, employees hired to serve in new offices at the Department, like employees transferred to the Department, may be removed individually from collective bargaining for national security reasons.

Sec. 187 subsections (f)(2) - (4). Other personnel matters. The transfer of an employee to the Department will not alter the terms and conditions of employment, including compensation. Any conditions for appointment, including the requirement of Senate confirmation, would continue to apply. Any employee transferred with pre-existing whistleblower protection rights may not be deprived of those rights based on a determination of necessity for good administration.

Sec. 187 subsection (g). No effect on intelligence authorities. The transfer of authorities under this title shall not be construed as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

Sec. 188. Transition Plan. By September 15, 2002, the President is required to submit to Congress a transition plan, including a detailed plan for transition to the Department and implementation of relevant portions of the Act, and including a proposal for financing the new operations of the Department for which appropriations are not available.

Sec. 189. Use of Appropriated Funds. This section sets forth a number of conditions on the use of funds by the Department, the Office, and the National Combating Terrorism Strategy Panel. Balances of appropriations and other funds transferred under the Act may be used only for the purposes for which they were originally available and subject to the conditions provided by the law originally appropriating or otherwise making available the amount. The President shall notify Congress not less than 15 days before transferring funds or assets under this Act. Additional conditions under this section apply to disposal of property, receipt and use of gifts, and other matters. The President shall submit a detailed budget request for the Department for FY 2004.

Subtitle F - Administrative Provisions.

Sec. 191. Reorganizations and Delegations. Provides that the Secretary may, as appropriate, reorganize within the Department, except where specific organizational structure is established by law. The Secretary may delegate any of the functions of the Secretary and authorize successive redelegations to other officers or employees of the Department. However, any function vested by law, or assigned by this title, to an organizational unit of the Department or to the head of an organizational unit may not be delegated outside of that unit.

Sec. 192. Reporting Requirements. Requires the Comptroller General of the United States to submit to Congress a report not later than 15 months after the effective date of this division and each year for the succeeding five years containing an evaluation of the progress reports submitted under section 185 and the findings, conclusions and recommendations of the Comptroller General concerning how successfully the Department is meeting the homeland security missions of the Department and the other missions of the Department.

This section also outlines additional reports to be submitted by the Secretary. These include: (1) biennial reports relating to (a) border security and emergency preparedness, and (b) certifying preparedness to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction; (2) a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States; (3) a report with definitions of the terms “combating terrorism” and “homeland security,” and (4) a strategic plan and annual performance plan, along with annual performance reports, required by existing statutes.

Sec. 193. Environmental Protection, Safety, and Health Requirements. Provides that the Secretary shall ensure that the Department complies with all applicable environmental, safety and health statutes and requirements, and develops procedures for meeting such requirements.

Sec. 194. Labor Standards. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et. seq.).

Sec. 195. Procurement of Temporary and Intermittent Services. In addition to the authority to hire experts or consultants on a temporary or intermittent basis in accordance with section 3109(b) of title 5, United States Code, the Secretary may procure personal services, whenever necessary due to an urgent homeland security need, for periods of not more than a year without regard to the pay limitations of section 3109.

Sec. 196. Preserving Non-Homeland Security Mission Performance. Establishes a reporting requirement designed to monitor the performance of non-homeland security missions by entities transferred to the Department. For each of the first five years after a program or agency is transferred to the Department, the relevant Under Secretary must report to the Secretary, the Comptroller General and Congress regarding the performance of that entity, with particular emphasis on non-homeland security missions. These reports shall seek to inventory non-homeland security capabilities, including the personnel, budgets and flexibilities used to carry out those functions. The reports shall include information regarding whether any changes are required to enable the transferred entities to continue to carry out non-homeland security missions without diminishment.

Sec. 197. Future Years Homeland Security Program. Beginning with the FY 2005 budget request, each budget request shall be accompanied by a Future Years Homeland Security Program, reflecting the estimated expenditures and proposed appropriations included in that budget covering the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

Sec. 198. Protection of Voluntarily Furnished Confidential Information. Records pertaining to the vulnerability of, and threats to, critical infrastructure that are voluntarily furnished to the Department and that are not customarily made public by the provider are not subject to public disclosure under the Freedom of Information Act. This provision would not cover records submitted to satisfy legal requirements or to obtain permits or other approvals, and would not cover information that another Federal, State or local agency receives independently of the Department.

Sec. 199. Authorization of Appropriations. Authorizes such sums as may be necessary to enable the Secretary to administer and manage the Department and to carry out the Department's functions created by the Act.

Title II - National Office for Combating Terrorism.

Sec. 201. National Office for Combating Terrorism. This section establishes a terrorism office within the Executive Office of the President, to be run by a Director who will be appointed by the President with advice and consent of the Senate. The responsibilities of the Director will include: (1) to develop national objectives and policies for combating terrorism; (2) to direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, to be conducted by heads of the relevant Federal agencies; (3) to develop, with the Secretary of Homeland Security, a National Strategy for combating terrorism under Title III; (4) to coordinate, oversee and evaluate implementation and execution of the Strategy; (5) to coordinate the development of a comprehensive annual budget for programs and activities under the Strategy, including the budgets of the military departments and agencies with the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection; (6) to have lead responsibility for budget recommendations relating to military, intelligence, law enforcement and diplomatic assets in support of the Strategy; (7) to exercise funding authority for Federal terrorism prevention and response agencies; (8) to serve as an adviser to the National Security Council; and (9) work with the Director of the Federal Bureau of Investigation to ensure that the Director receives relevant information related to terrorism from the FBI, and that such information is made available to appropriate Federal agencies and State and local law enforcement officials. The President, in consultation with the Director, shall assign resources as appropriate to the Office. The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress to information or personnel of the Office.

Sec. 202. Funding for Strategy Programs and Activities. This section establishes a process for the Director to review the proposed budgets for federal programs under the Strategy. The Director will, in consultation with the Director of the Office of Management and Budget and the Secretary of Homeland Security, identify programs that

contribute to the Strategy, and provide advice to the heads of the executive departments and agencies on the amount and use of these programs through budget certification procedures and the development of a consolidated budget for the Strategy. The Director will review agencies' budget submissions to OMB and may decertify any proposals that do not incorporate the proposed funding or initiatives previously advised by the National Office on Combating Terrorism. The Director will provide Congress with notice of any such decertification. Each year, the Director will, in consultation with the Secretary of Homeland Security and the head of each Federal terrorism prevention and response agency, develop a consolidated proposed budget for all programs and activities under the Strategy for that fiscal year.

Title III - National Strategy for Combating Terrorism and the Homeland Security Response

Sec. 301. Strategy. This section directs the Secretary and Director to develop the National Strategy for combating terrorism and homeland security response for the detection, prevention, protection, response and recovery necessary to counter terrorist threats. The Secretary has responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating state and local efforts with activities of the Federal government. The Director has overall responsibility for the development of the Strategy, and particularly for those portions addressing intelligence, military assets, law enforcement and diplomacy. The Strategy will include: 1) policies and procedures to maximize the collection, translation, analysis, exploitation and dissemination of information related to combating terrorism and homeland security response throughout the Federal government and with State and local authorities; 2) plans for countering chemical, biological, radiological, nuclear, explosives, and cyber threats; 3) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on homeland; 4) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks; 5) a review of measures needed to enhance transportation security with respect to potential terrorist attacks; and 6) other critical areas.

This section also establishes the National Combating Terrorism and Homeland Security Response Council to assist with preparation and implementation of the Strategy. Members of the Council will be the heads of federal terrorism prevention and response agencies or their designees. The Secretary and Director will co-chair the Council, which will meet at their direction.

Sec. 302. Management Guidance for Strategy Implementation. This section directs the Office of Management and Budget, in consultation with the Secretary and the Director, to provide management guidance for Federal agencies to successfully implement the Strategy, and to report to Congress on these efforts. It also requires the General Accounting Office to evaluate the management guidance and agency performance in implementing the Strategy.

Sec. 303. National Combating Terrorism Strategy Panel. This section establishes a nonpartisan, independent panel to conduct an assessment of the Strategy as well as an independent, alternative assessment of measures required to combat terrorism, including homeland security measures. The panel will prepare a preliminary report no later than July 1, 2004, with a final report by December 1, 2004 and every four years thereafter.

Title IV. Law Enforcement Powers of Inspector General Agents

Sec. 401. Law Enforcement Powers of Inspector General Agents. This section amends the Inspector General Act to authorize certain IG officers to carry a firearm or make an arrest in certain instances while engaged in official duties as authorized by this Act or other statute, or by the Attorney General; and to seek and execute warrants under the authority of the United States upon probable cause that a violation has been committed. This section also describes the conditions under which the Attorney General may authorize exercise of powers under this section, and it lists those offices of Inspector General which are exempt from this requirement. This section further describes the circumstances under which the Attorney General may also rescind or suspend powers authorized for an Office of Inspector General, and provides that determinations by the Attorney General in this section shall not be reviewable in or by any court. The section also requires the Offices of Inspector General to enter into memoranda of understanding to establish an external review process for ensuring that adequate safeguards and management procedures continue to exist within each Office.

Title V - Federal Emergency Procurement Flexibility.

Subtitle A – Temporary Flexibility for Certain Procurements

Sec. 501. Defines the term “executive agency.”

Sec. 502. Procurements for Defense Against or Recovery from Terrorism or Nuclear, Biological, Chemical, or Radiological Attack. States that the authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack for one year after the date of enactment.

Sec. 503. Increased Simplified Acquisition Threshold for Procurements in Support of Humanitarian or Peacekeeping Operations or Contingency Operations. Raises the threshold amounts to \$250,000 for contracts carried out in the United States and to \$500,000 for contracts outside the United States pursuant to section 502. Raises the Small Business reserve to \$250,000 for contracts inside the United States and \$500,000 for contracts outside the United States for procurements carried out pursuant to section 502.

Sec. 504. Increased Micro-Purchase Threshold for Certain Procurements. Raises the micro-purchase threshold with respect to procurements referred to in section 502 to \$10,000.

Sec. 505. Application of Certain Commercial Items Authorities to Certain Procurements. Applies commercial items procedures to non-commercial items for emergency purposes. Requires the Director of OMB to issue guidance and procedures for use of simplified acquisition procedures for a purchase of property or services in excess of \$5,000,000. Provides continuation of authority for simplified purchase procedures.

Sec. 506. Use of Streamlined Procedures. Lists streamlined acquisition procedures which may be used. The head of an executive agency shall use, when appropriate, streamlined acquisition authorities and procedures provided by law including use of procedures other than competitive procedures and task and delivery order contracts. This provision removes the thresholds (\$5 million for manufacturing and \$3 million for all other contracts) for contracts with limited competition under the small business “8(A)” and HUB Zone programs. Waiving the threshold means that small disadvantaged businesses within the “8(A)” program and qualified HUB Zone small business concerns can compete for contracts using limited competition (or sole source competition) regardless of the value of the contract.

Sec. 507. Review and Report by Comptroller General. Requires that not later than March 31, 2004, the Comptroller General complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle, and submit a report on the results of the review to the Senate Governmental Affairs Committee and House Government Reform Committee. The report shall assess the extent to which property and services procured in accordance with this subtitle have contributed to the capacity of Federal employees to carry out the missions of the agencies, and the extent to which Federal employees have been trained on the use of technology. The report shall include any recommendations of the Comptroller General resulting from the assessment. The Comptroller General shall consult with the Committee on Governmental Affairs and the Committee on Governmental Reform on the specific issues and topics to be reviewed, including areas such as technology integration, employee training, and human capital management, and the data requirements of the study.

Subtitle B – Other Matters

Sec. 511. Identification of New Entrants Into the Federal Marketplace. Requires agencies to do ongoing market research to identify new companies with new capabilities, including small businesses, to help agencies facilitate defense against or recovery from terrorism or nuclear, biological, chemical or radiological attack.

Title VI - Effective Date.

Sec. 601. Provides that the Division shall take effect 30 days after the date of enactment, or if enacted within 30 days before January 1, 2003, on January 1, 2003.

Division B – Immigration Reform, Accountability, and Security Enhancement Act of 2002

Sec. 1001. Short Title. This Division may be cited as the “Immigration Reform, Accountability, and Security Enhancement Act of 2002.”

Sec. 1002. Definitions. Defines key terms, including Under Secretary, Enforcement Bureau, and Service Bureau.

Title XI. Directorate of Immigration Affairs

Subtitle A - Organization

Sec. 1101. Abolition of INS. This section abolishes the Immigration and Naturalization Service (“INS”).

Sec. 1102. Establishment of Directorate of Immigration Affairs. This section establishes a Directorate of Immigration Affairs (“Directorate”) within the Department of Homeland Security (“DHS”). The Directorate is divided into three parts: the Under Secretary for Immigration Affairs, the Assistant Secretary for Immigration Services (the “Service Bureau”), and the Assistant Secretary for Enforcement and Border Affairs (the “Enforcement Bureau”). The functions of the Directorate are also tripartite: (1) immigration policy, administration, and inspection functions; (2) immigration service and adjudication functions; and (3) immigration enforcement functions. This section also authorizes funds to the DHS as necessary to carry out the functions of the Directorate and defines what is meant by U.S. immigration laws.

Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs. This section establishes that the Directorate will be headed by the Under Secretary of Homeland Security for Immigration Affairs (“Under Secretary”). Charged with all responsibilities and authority in the administration of the Directorate, the Under Secretary is responsible for: (1) administration and enforcement of U.S. immigration laws; (2) administration of the Directorate, including supervision and coordination of the two Bureaus; (3) inspection of individuals arriving at ports of entry; (4) management of resources, personnel, and other support; (5) management of information resources, including maintenance and coordination of records, databases, and other information within the Directorate; and (6) coordination of response to civil rights violations.

A General Counsel serves as the chief legal officer for the Directorate. The General Counsel’s responsibilities include: providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director with regard to legal matters affecting the Directorate and its components. A Chief Financial Officer (“CFO”) will direct, supervise, and coordinate all budget formulas and execution for the Directorate. A Chief of Policy and Strategy is created to establish national immigration policy and priorities, perform policy research and analysis on immigration issues under U.S. immigration laws, and coordinate immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau. A Chief of Congressional, Intergovernmental, and Public Affairs is established to provide Congress with information relating to immigration issues, serve as a liaison with other Federal agencies on immigration issues, and respond to inquiries from, and provide information to the media on immigration issues arising under U.S. immigration laws.

Sec. 1104. Bureau of Immigration Services. This section establishes the Bureau of Immigration Services (“Service Bureau”), headed by the Assistant Secretary of Homeland Security for Immigration Services. The Assistant Secretary shall be appointed by the Secretary of Homeland Security in consultation with the Under Secretary and shall report directly to the Under Secretary. The Assistant Secretary shall administer the immigration service and adjudication functions of the Directorate which include: (1) adjudication of petitions for classification of non-immigrant and immigrant status; (2) adjudication of applications for adjustment of status and change of status; (3) adjudication of naturalization applications; (4) adjudication of asylum and refugee applications; (5) adjudications at Service Centers; (6) determinations of custody and parole of asylum seekers; and (7) all other adjudications under U.S. immigration laws. A Chief Budget Officer, under the authority of the CFO, shall be responsible for monitoring and supervising all financial activities of the Service Bureau. An Office of Quality Assurance is established to develop procedures and conduct audits to ensure the Directorate’s policies with regard to services and adjudications are properly implemented, and to ensure sound records management and efficient and accurate service. An Office of Professional Responsibility is established to ensure the professionalism of the Service Bureau, and receive and investigate charges of misconduct or ill treatment made by the public. The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall determine the training of Service Bureau personnel.

Sec. 1105. Bureau of Enforcement and Border Affairs. This section establishes the Bureau of Enforcement and Border Affairs (“Enforcement Bureau”), headed by the Assistant Secretary of Homeland Security for Enforcement and Border Affairs. The Enforcement Bureau Assistant Secretary shall be appointed by the Secretary for Homeland Security, in consultation with the Under Secretary, and shall report directly to the Under Secretary of the Directorate. The Enforcement Bureau Assistant Secretary shall administer the immigration enforcement functions of the

Directorate which include the following functions: (1) border patrol; (2) detention; (3) removal; (4) intelligence; and (5) investigations. A Chief Budget Officer, under the authority of the CFO, shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau. An Office of Professional Responsibility shall ensure the professionalism of the Enforcement Bureau, and receive and investigate charges of misconduct or ill treatment made by the public. An Office of Quality Assurance shall develop procedures and conduct audits to ensure the Directorate's policies with regard to enforcement are correctly implemented; and that the Enforcement Bureau's policies and practices result in sound records management and efficient and accurate record-keeping. The Enforcement Bureau Assistant Secretary, in consultation with the Under Secretary, shall determine the training of Enforcement Bureau personnel.

Sec. 1106. Office of the Ombudsman within the Directorate. This section establishes an Office of the Ombudsman within the Directorate of Immigration Affairs. The Ombudsman shall be appointed by the Secretary of Homeland Security and report directly to the Secretary of Homeland Security. The Office of Ombudsman will: 1) assist individuals in resolving problems with the Directorate or any component thereof; 2) identify systemic problems encountered by the public in dealings with the Directorate or any component thereof; 3) propose changes in the administrative practices or regulations of the Directorate or any component thereof to mitigate these problems; 4) identify potential legislative changes that may be appropriate to mitigate such problems; and 5) monitor the coverage and geographic distribution of local offices of the Directorate. The Ombudsman shall have the responsibility and authority to appoint local or regional representatives as may be necessary to address and rectify problems. The Ombudsman shall submit an annual report to the House and Senate Judiciary Committees on the activities of the Ombudsman during the fiscal year, providing a full analysis identifying actions taken by the Ombudsman's Office, including initiatives to improve the responsiveness of the Directorate; a summary of serious or systemic problems encountered by the public; an accounting of those items that have been addressed, are being addressed, and have not been addressed with reasons for and results of such action; recommendations to resolve problems encountered by the public; recommendations for action as may be appropriate to resolve problems encountered by the public; recommendations to resolve problems caused by inadequate funding or staffing; and other information as the Ombudsman deems advisable. Appropriations are authorized as necessary to carry out this section.

Sec. 1107. Office of Immigration Statistics within the Directorate. This section establishes the Office of Immigration Statistics within the Directorate, headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Directorate and the Executive Office of Immigration Review (EOIR) (or successor entity). The Director shall be responsible for: 1) maintaining immigration statistical information of the Directorate; and 2) establishing standards of reliability and validity for immigration statistics collected by the Service Bureau, the Enforcement Bureau, and the EOIR. The Directorate and the EOIR shall provide statistical information from their respective operational data systems to the Office of Immigration Statistics. The Director, under the direction of the Under Secretary shall ensure the interoperability of the databases of the Directorate, the Service Bureau, the Enforcement Bureau, and the EOIR to permit the Director of the Office to perform the duties of the office. The functions performed by the Statistics Branch of the INS Office of Policy and Planning are transferred to the Office of Immigration Statistics.

Sec. 1108. Clerical amendments. This section includes clerical amendments.

Subtitle B - Transition Provisions

Sec. 1111. Transfer of Functions. All functions under U.S. immigration laws vested by statute in, or exercised by, the Attorney General are transferred to the Secretary of Homeland Security. The functions of the Commissioner of the INS are transferred to the Directorate. The Under Secretary may, for purposes of performing any function transferred to the Directorate, exercise all authorities under any other provision of law that were available with respect to the performance of the function.

Sec. 1112. Transfer of Personnel and other Resources. There are transferred to the Under Secretary for appropriate allocation: 1) the personnel of the DOJ employed in connection with the functions transferred pursuant to this title; and 2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the INS in connection with the functions transferred pursuant to this title.

Sec. 1113. Determinations with Respect to Functions and Resources. The Under Secretary shall determine: 1) which of the functions transferred under section 111 are immigration policy, administration and inspection functions; immigration service and adjudication functions; and immigration enforcement functions; and 2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions immediately prior to the title's effective date.

Sec. 1114. Delegation and Reservation of Functions. The Under Secretary shall delegate immigration service and adjudication functions to the Assistant Secretary for Immigration Services, and immigration enforcement functions to the Assistant Secretary for Enforcement and Border Affairs. Immigration policy, administration and inspection functions are reserved for the Under Secretary. Some delegations may be made on a nonexclusive basis. The Under Secretary may make delegations to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Director may designate, and may authorize successive re-delegations of such functions as may be necessary or appropriate.

Sec. 1115. Allocation of Personnel and other Resources. The Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions. Unexpended funds transferred by section 112 shall be used only for allocated purposes. The Attorney General, in consultation with the Secretary of Homeland Security, shall provide for the termination of affairs of the INS. The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, the Enforcement Bureau. The Under Secretary shall maintain control and oversight over shared computer databases and systems and records management.

Sec. 1116. Savings Provisions. All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, privileges, any proceedings or any application for any benefit, service, as well as the continuance of lawsuits and other matters are transferred to the new entities and shall continue until modified or terminated.

Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization. The INS Commissioner serving on the day before the effective date of this title may serve as the Under Secretary until one is appointed.

Sec. 1118. Executive Office for Immigration Review Authorities not Affected. Nothing in the legislation may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the EOIR (or its successor entity) or any officer, employee, or component thereof immediately prior to the effective date of this title.

Sec. 1119. Other Authorities not Affected. Nothing in this legislation may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Secretary of State, the Secretary of Labor or their special agents, or under the U.S. immigration laws.

Sec. 1120. Transition Funding. Funds are authorized to the Department of Homeland Security as necessary to abolish the INS, establish the Directorate and its components, transfer the functions required under this Act, and carry out any other duty made necessary by this division. These funds will be deposited into a separate account established in the general fund of the U.S. Treasury. Not later than 90 days after the date of enactment of this Act, and at the end of each fiscal year in which appropriations are made, the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs.

Subtitle C - Miscellaneous Provisions

Sec. 1121. Funding Adjudication and Naturalization Services. This section requires that all fees collected for the provision of adjudication or naturalization services be used only to fund adjudication or naturalization services, or subject to the availability of funds, similar services provided without charge to asylum and refugee applicants. In addition to funds already appropriated for this purpose, funds are authorized as necessary to carry out sections of the Immigration and Nationality Act dealing with asylum and refugee processing. Separate accounts are established in the U.S. Treasury for appropriated funds and other deposits available to the Service Bureau and the Enforcement Bureau. Fees may not be transferred between these accounts. Funds are also authorized as necessary to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (Title II of P.L. 106-313).

Sec. 1122. Application of Internet-based Technologies. Not later than two year after enactment, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will allow an immigrant, non-immigrant, employer, or other person who files any application, petition, or other request for benefit under the U.S. immigration laws with the Directorate to access case status information on-line. In establishing the database, the Under Secretary shall consider all applicable privacy issues and no personally identifying information shall be accessible to unauthorized persons. Fees will not be charged to anyone using the database to access information about him/herself. The Under Secretary, in consultation with the Technology Advisory Committee is required to conduct a study on the feasibility of an on-line filing system and report to the House and Senate Judiciary Committee on the results within one year of enactment. To assist in carrying out this section, the Under Secretary is required to establish a Technology Advisory Committee.

Sec. 1123. Alternatives to Detention of Asylum Seekers. This section authorizes the Under Secretary to assign asylum officers to major ports of entry to assist in the inspection of asylum seekers. For other ports, the under Secretary shall take steps to ensure that asylum officers are able to participate in the inspection process. This section also promote alternatives to detention of asylum seekers who do not have prior nonpolitical criminal records and establish conditions for detention of asylum seekers that ensure a safe and humane environment. The Under Secretary is required to consider the following specific alternatives to detention: parole; parole with appearance assistance provided by private nonprofit voluntary agencies; non-secure shelter care or group homes operated by private nonprofit voluntary agencies; and noninstitutional settings for minors, such as foster care or group homes operated by private nonprofit voluntary agencies.

Subtitle D - Effective Date

Sec. 1131. Effective Date. This title shall take effect one year after the effective date of division A of this Act.

Title XII - Unaccompanied Alien Children Protection

Sec. 1201. Short Title. This title may be cited as “The Unaccompanied Alien Child Protection Act of 2002.”

Sec. 1202. Definitions. Key terms, including unaccompanied alien child, are defined.

Subtitle A – Structural Changes

Sec. 1211. Responsibilities of the Office of Refugee Resettlement with Respect to Unaccompanied Alien Children. The Office of Refugee Resettlement (“Office”) shall be responsible for coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status and ensuring minimum standards of detention for all unaccompanied alien children. The Director of the Office (“Director”) shall be responsible for: 1) ensuring that the best interests of the child are considered in the care and placement of unaccompanied alien children; 2) making placement, release, and detention determinations; 3) implementing determinations; 4) convening the Interagency Task Force on Unaccompanied Alien Children (in the absence of the Assistant Secretary); 5) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children; 6) overseeing persons, entities and facilities; 7) compiling and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide services; 8) maintaining statistical information and other data on unaccompanied alien children in the Office’s custody and care; 9) collecting and compiling statistical information from the INS (or successor entity); and 10) conducting investigations and inspections of facilities and other entities where unaccompanied alien children reside. The Director is also encouraged to utilize the refugee children foster care system. The Director shall have the power to contract with service providers and compel compliance with the terms and conditions of section 1323. Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and National Act from the authority of any official of the Service (or its successor entity), the EOIR (or its successor entity) or the Department of State.

Sec. 1212. Establishment of Interagency Task Force on Unaccompanied Alien Children. An Interagency Task Force on Unaccompanied Alien Children is established consisting of various key agencies and departments of the federal government.

Sec. 1213. Transition Provisions. All functions with respect to the care and custody of unaccompanied alien children under the immigration laws, vested in, or exercised by, the Commissioner or his employees is transferred to

the Office.

Sec. 1214. Effective Date. This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B – Custody, Release, Family Reunification, and Detention

Sec. 1221. Procedures when Encountering Unaccompanied Alien Children. This section establishes procedures to be followed when encountering unaccompanied alien children. At the border, or at ports of entry, an unaccompanied alien child may be removed from the United States if deemed inadmissible under the Immigration and Nationality Act, unless the child is a national of a country contiguous to the U.S. and who fears persecution or would be harmed if returned to that country. Custody of all unaccompanied alien children found in the interior of the United States shall be under the jurisdiction of the Office, with exceptions of children who have committed crimes and or threaten national security. An unaccompanied alien child shall be transferred to the Office within 72 hours of apprehension.

Sec. 1222. Family Reunification for Unaccompanied Alien Children with Relatives in the United States. Unaccompanied alien children in the custody of the Office shall be promptly placed with one of the following in order of preference: 1) a parent; 2) a legal guardian; 3) an adult relative; 4) an entity designated by the parent or legal guardian; 5) a state-licensed juvenile shelter or group home; or 6) other qualified adults or entities.

Sec. 1223. Appropriate Conditions for Detention of Unaccompanied Alien Children. Unaccompanied children shall not be placed in adult detention facilities, but children who exhibit violent or criminal behavior can be detained in appropriate facilities for delinquent children. The Office shall establish appropriate standards and conditions for the detention of unaccompanied alien children, providing appropriate educational services, medical care, mental health care, access to telephones, access to legal services, access to interpreters, supervision by professionals trained in the care of children, recreational programs and activities, spiritual and religious needs, and dietary needs. The Director and the Secretary of Homeland Security shall develop procedures which prohibit shackling, handcuffing, or other restraints; solitary confinement; or pat or strip searches.

Sec. 1224. Repatriated Unaccompanied Alien Children. Consistent with international agreements to which the United States is a party and to the extent practicable, the United States shall undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of the child. The Director shall submit a report to Congress providing information on efforts to repatriate unaccompanied children.

Sec. 1225. Establishing the Age of an Unaccompanied Alien Child. To address problems created by reliance on inaccurate methods for establishing the age of a child, the Director shall establish procedures for determining age.

Sec. 1226. Effective Date. This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C - Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

Sec. 1231. Right of unaccompanied alien children to guardians ad litem. No later than 72 hours after the Office assumes custody of an unaccompanied alien child, the Director shall appoint a guardian ad litem to look after the child's best interests. The qualifications, duties, and powers of the guardian ad litem are set forth.

Sec. 1232. Right of unaccompanied alien children to counsel. The Director shall ensure that all unaccompanied alien children have competent counsel appointed to represent them in immigration proceedings. Where possible, the Director shall utilize pro bono attorneys. Otherwise, the Director shall appoint government-funded counsel. Requirements for representation are set forth, including duties and access to children.

Sec. 1233. Effective date; applicability. This subtitle shall take effect one year after the effective date of division A of this Act and shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D - Strengthening Policies for Permanent Protection of Alien Children

Sec. 1241. Special Immigrant Juvenile Visa. This section strengthens the Special Immigrant Juvenile Visa to make

it a useful and flexible means of providing permanent protection to a small number of abused, neglected and abandoned youths.

Sec. 1242. Training for officials and certain private parties who come into contact with unaccompanied alien children. This section provides training to officials involved in dependency proceedings, social service providers, as well INS personnel who come into contact with unaccompanied alien children. The Secretary of Homeland Security, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children.

Sec. 1243. Effective Date. The amendments of section 1341 shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this Act.

Subtitle E- Children Refugee and Asylum Seekers

Sec. 1251. Guidelines for children's asylum claims. The section expresses the sense of Congress commending the INS for the issuance of its Guidelines for Children's Asylum Claims and requires the Secretary of Homeland Security to provide training to asylum officers, immigration judges, members of the Board of Immigration Appeals and immigration officers on these guidelines.

Sec. 1252. Unaccompanied Refugee Children. This section requires an analysis of the situation faced by unaccompanied refugee children around the world and requires training on the needs of these refugee children.

Subtitle F - Authorization of Appropriations

Sec. 1261. Authorization of Appropriations. This section authorizes such sums as may be necessary to carry out the provisions of this title.

Title XIII – Agency for Immigration Hearings and Appeals

Subtitle A- Structure and Function

Sec. 1301. Establishment. This section abolishes the Executive Office for Immigration Review (EOIR) and creates the Agency for Immigration Hearings and Appeals (AIHA).

Sec. 1302. Director of the Agency. This section provides that the agency shall have a Director, who shall be appointed by the President and confirmed by the Senate. The Director runs the agency, appoints the Chair and members of the appellate body (Board of Immigration Appeals) and the Chief Immigration Judge. Also provides that the agency shall have a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as deemed necessary.

Sec. 1303. Board of Immigration Appeals. This section establishes the Board of Immigration Appeals to perform the appellate functions of the agency, and shall consist of a Chair and at least 14 Board Members (who are appointed by the Director in consultation with the Chair). Provides that the Chair and Board Members must be an attorney in good standing and have a minimum of 7 years professional legal expertise in immigration and nationality law. Also provides that the Board retains the jurisdiction it holds under EOIR and Board Members are compelled to exercise their independent judgment.

Sec. 1304. Chief Immigration Judge. This section establishes the Office of the Chief Immigration Judge to administer the immigration courts, headed by a Chief Immigration Judge. Provides that the Chief Immigration Judge and each immigration judge must be an attorney in good standing and have a minimum of 7 years professional legal expertise in immigration and nationality law. Also provides that the immigration courts retain the jurisdiction they hold under EOIR and immigration judges are compelled to exercise their independent judgment.

Sec. 1305. Chief Administrative Hearing Officer. This section establishes the position of Chief Administrative Hearing Officer to hear cases involving unfair immigration-related employment practices and penalties for document

fraud.

Sec. 1306. Removal of Judges. This section provides that the Director, in consultation with the appropriate component head, may remove Board Members or immigration judges for good cause, which shall include neglect of duty and malfeasance.

Sec. 1307. Authorization of Appropriations. This section authorizes the appropriation of funds necessary to execute this title. [Note: Since these entities already exist, the execution of this title should be budget neutral.]

Subtitle B -Transfer of Functions and Savings Provisions

Sec. 1311. Transition Provisions. This section provides for the transfer of functions from EOIR to the new agency.

Subtitle C- Effective Date

Sec. 1321. Effective Date. This section provides that this title takes effect one year after the effective date of division A of this Act.

Division C - Federal Workforce Improvement

Title XXI - Chief Human Capital Officers

Sec. 2101. Short Title. This title may be cited as the “Chief Human Capital Officers Act of 2002.”

Sec. 2102. Agency Chief Human Capital Officers. Creates a chief human capital officer in major agencies (*i.e.*, agencies that are required, under the Chief Financial Officers Act of 1990, to have Chief Financial Officers), who will advise and assist in carrying out the responsibilities of selecting, developing, and managing a high-quality workforce.

Sec. 2103. Chief Human Capital Officers Council. Creates a Chief Human Capital Officers Council that will advise and coordinate the human capital functions of each agency and meet with union representatives at least annually.

Sec. 2104. Strategic Human Capital Management. Requires the Office of Personnel Management to design a set of systems, including metrics, for assessing human capital management by agencies.

Sec. 2105. Effective Date. Title XXI is effective 180 days after enactment.

Title XXII - Reforms Relating to Human Capital Management

Sec. 2201. Inclusion of Agency Human Capital Strategic Planning in Performance Plans and Program Performance Reports. Amends the Government Performance and Results Act of 1993 to specify how human capital management is to be included in performance plans.

Sec. 2202. Reform of the Competitive Service Hiring Process. Allows agencies to use alternative method for selecting new employees instead of the traditional “rule of 3.” The agency may divide applicants into two or more quality categories, with disabled veterans moving to the top of the highest category. Also, allows for direct appointment of candidates to positions that have been noticed, when OPM determines there is a severe shortage of candidates and a critical hiring need.

Sec. 2203. Permanent Extension, Revision, and Expansion of Authorities for Use Of Voluntary Separation Incentive Pay and Voluntary Early Retirement. Provides government-wide authority for offering Voluntary Separation Incentive Payments and Voluntary Early Retirement, and states that it is the sense of Congress that these provisions are not intended to downsize the federal workforce.

Sec. 2204. Student Volunteer Transit Subsidy. Provides a transit subsidy for student volunteers with the federal

government.

Title XXIII - Reforms Relating to the Senior Executive Service

Sec. 2301. Repeal of Recertification Requirements of Senior Executives. Repeals recertification requirements for senior executives.

Sec. 2302. Adjustment of Limitation on Total Annual Compensation. Increases the cap on the total annual compensation of senior executives, Administrative Law Judges, officers of the courts, and certain other highly paid officers, thereby enabling performance bonuses to be paid within the cap in a single year.

Title XXIV - Academic Training

Sec. 2401. Academic Training. Reduces restrictions on providing academic degree training to federal employees.

Sec. 2402. Modifications to National Security Education Program. Modifies the National Security Education Program (NSEP) to allow NSEP fellows to work in a non-national security position with the federal government if a national security position is not available.

Sec. 2403. Compensatory Time off for Travel. Grants to federal employees compensatory time off for time spent in travel status away from duty station to the extent not otherwise compensable.